IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

Crl.Rev.Pet.No. 921 of 1999()

CC.638/1997 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHAVAKKAD

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REVN. PETITIONER:

SAIDU MUHAMMED, S/O.SULAIMAN,
RAGAMMARAKKIL HOUSE,
PAVARATTY VILLAGE,
CHAVAKKAD TALUK.

BY ADV. SRI.RAJIT

RESPONDENTS:
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1. STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

2. HAMSA, S/O.KARAPPAM VETTIL MAMI,
PAINKANNIYOOR DESOM, PAVARATTY VILLAGE.

3. ABDULLAH, S/O.MANJIYIL ABDUL KHADER,
VENMENAD DESOM, PAVARATTY VILLAGE.

BY ADV. SRI.P.V.CHANDRA MOHAN
PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 02/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.R.P.No. 921/1999

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Dated this the 2nd day of July, 2007

O R D E R

The revision petitioner is the de facto complainant in C.C.No.638/1997 in the file of Judicial Magistrate of the First Class, Chavakkad, with respect to the offence under Section 325 I.P.C read with Section 34 of the Indian Penal Code. The prosecution case is that on 16/08/1997, at about 4 p.m., the accused, two in number, on account of previous enmity manhandled the de facto complainant and caused fracture of left mandible and dislocation of teeth, at a place in the public road near Venmenad Thathakulangara temple. The evidence adduced in the matter consisted testimony of PWs.1 to 10, Exts.P1 to P5. Of the occurrence witnesses cited, PWs.3 to 5 and 8 did not support the prosecution, and were treated as hostile. Only PW.2 has supported the prosecution version. PW.1 is the de facto complainant. Defence examined DW.1 and marked Ext.D1.

2. The trial court acquitted the accused on the ground of benefit of doubt as the delay in launching the prosecution, that is, 14 days was not properly explained and also a complaint has been filed before the police with respect to the same incident on 18/08/1997.

3. It is the version of PW.1 that on the same day, he was admitted in the hospital and, hence, was under the impression that the police would have taken up the matter and only after he got discharged he enquired as to the state of affairs and found that the police have not registered the case. PW.1 has stated that he was discharged from the hospital on 26/08/1997. The F.I.R is seen registered on 30/08/1997, at 4 p.m. It would show that even after he was discharged, there was a further delay of four days. No objective evidence has been adduced to establish the fact that he was discharged only on 26/08/1997. Hence, I find that the delay stands not explained properly as held by the court below.

However, DW.1, the Assistant Sub Inspector of Police has proved Ext.D1, the relevant page of the complaint register of Pavaratty Police Station. As per the version of DW.1, the parties were called to the police station and the matter was settled and it was brought out in the cross-examination that no further steps were taken as the matter was non-cognizable case. The same would indicate that the fracture was not mentioned in the complaint. The non-mentioning of the above injury also cast serious doubts as to the genuineness of the case set out by the de facto complainant. I find that the conclusion arrived at by the court below is only a possible one and, hence, in exercise of the revisional powers against an order of acquittal and considering the constraints of the court in this regard, I find that no interference is called for. The revision petition is dismissed.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.R.P.No.921/1999

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O R D E R

2nd July, 2007